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April 11, 2018

Via E-filing

Clerk, United States District Court  
District of New Jersey  
M.L. King, Jr. Federal Bldg. &  
U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07102

Re: Vision Industries Group, Inc. v. Acu Plasmold, Inc., ABC Companies 1-10 and XYZ Corporations 1-10  
Civil Action No.:

Dear Sir or Madam:

Enclosed herewith please find the following:

1. Complaint; and
2. Civil Cover Sheet

Please file the original. Kindly charge any applicable filing fee to our Attorney Collateral Account #140579. Thank you.

Very truly yours,



EVELYN A. DONEGAN

EAD/psg  
Encs.

EVELYN A. DONEGAN, ESQ. (040481983)  
RUBIN, KAPLAN & ASSOCIATES  
A Professional Corporation  
200 Centennial Avenue, Suite 110  
Piscataway, New Jersey 08854  
(732) 463-7511  
Attorneys for Plaintiff, Vision Industries Group, Inc.

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

VISION INDUSTRIES GROUP, INC.,

Plaintiff,

v.

ACU PLASMOLD, INC.  
and ABC COMPANIES 1-10,  
(said companies being fictitious),  
and XYZ CORPORATIONS 1-10,  
(said corporations being fictitious),

Defendants.

Civil Action No.:

**COMPLAINT**

**COMPLAINT**

Plaintiff Vision Industries Group, Inc. (hereinafter "Vision Industries"), by and through its counsel, Evelyn A. Donegan, Esq., of Rubin, Kaplan & Associates, complain against Acu Plasmold, Inc. (hereinafter "Acu") and ABC Companies (1-5), said companies being fictitious, and alleges upon knowledge as to itself and otherwise upon information and belief as follows:

**NATURE OF THE ACTION**

1. This is a breach of contract action by a New Jersey Corporation for breach of a distributorship agreement and breach of the covenant of good faith and fair dealing with a company formed in Canada.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over all causes of actions set forth herein based upon 28 U.S.C. § 1332(a)(2), and pursuant to the supplemental jurisdiction of this Court for all non-federal causes of action under 28 U.S.C. § 1367.

3. This Court has personal jurisdiction over Defendants by virtue of, *inter alia*, (a) Defendant Acu Plasmold, Inc.'s having business relations within the State of New Jersey and conducting regular business transactions therein, giving it the requisite minimum contacts with the state required to be subject to jurisdiction therein; (b) Defendant Acu Plasmold, Inc. ("ACU Canada") having a place of business at 270 Esna Park Drive, Unit 9-10, Markham, Ontario, L3R1H3 Canada contracting with plaintiff, a New Jersey Corporation, to give plaintiff an exclusive sales territory of the United States, including New Jersey, for sales of defendant's products; and (c) Defendant Acu Plasmold has an American company affiliated with it known as Acu Plasmold, USA, Inc. in Rosemead, California. Acu Canada and Acu Plasmold, USA, Inc. have the same CEO.

4. Venue is proper in this judicial district and division since plaintiff is a New Jersey Corporation located at 500 Metuchen Road, South Plainfield, New Jersey.

5. The amount in controversy exceeds \$75,000.

### **THE PARTIES TO THE COMPLAINT**

6. Plaintiff Vision Industries Group, Inc. ("Vision Industries") is a New Jersey Corporation with its principal place of business at 500 Metuchen Road, South Plainfield, New Jersey 07080.

7. Defendant Acu Plasmold, Inc. ("Acu") is believed to be an Ontario Canada Corporation, having a principal place of business at 270 Esna Park Drive, Unit 9-10, Markham Ontario, L3R1H3 Canada.

8. Defendants ABC Companies 1-10 and XYZ Corporations 1-10 are fictitious persons or entities whose present identity and address are unknown, who have also breached their obligations to Plaintiff, or who assisted, conspired, or otherwise cooperated with the other Defendants in the acts complained of herein.

### **BACKGROUND**

9. Plaintiff and Defendant entered into a Distribution Agreement dated November 2015 ("Distribution Agreement").

10. Plaintiff is in the business of selling windows and windows related products and components.

11. Defendant Acu is in the business of manufacturing and/or supplying windows, window related products and components.

12. Plaintiff began its preparations to sell products manufactured and/or supplied by defendant.

13. These preparations involved significant costs in excess of \$230,000 for advertising in Door and Window Market Magazine, hiring consultants, appearances at the Las Vegas trade show with booth, sample costs, appearance at the Atlanta trade show with booth, prototypes, sample creation, and testing fees.

14. Upon placing the initial orders for product with the defendant, there was no satisfactory response from defendant as to when the plaintiff would provide the products.

15. Plaintiff cannot move forward with obtaining orders for products unless plaintiff can receive the supplies of products defendant is obligated to supply.

**FIRST CAUSE OF ACTION**

**(BREACH OF CONTRACT)**

16. Paragraphs 1 through 15 are realleged and incorporated herein by reference.

17. Defendant has breached its obligation under the Distribution Agreement to sell the product to plaintiff.

18. Plaintiff ordered products from defendant to be able to resell to its potential customers.

19. Defendant refused to sell the products to plaintiff.

20. Defendant increased the prices of some products without notice.

21. As a result plaintiff has incurred damages due to defendant's breach of its contract to supply products.

22. Plaintiff has incurred financial losses and will continue to do so due to defendant's breaches.

**SECOND CAUSE OF ACTION**

**(BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING)**

23. Paragraphs 1 through 22 are realleged and incorporated herein by reference.

24. It is implied under the Distribution Agreement that each party would proceed in good faith.

25. It is implied under the Distribution Agreement that defendant would sell the products to plaintiff when ordered by the plaintiff.

26. It is implied under the Distribution Agreement that the defendant would properly test and certify its products that it has developed to sell to plaintiff in fulfillment of the Distributorship.

27. It is implied under the Distribution Agreement that the defendant will not alter its pricing to plaintiff unreasonably, exorbitantly or without notice so as to disrupt the flow of products to plaintiff.

28. The defendant was aware that plaintiff would of necessity incur substantial expenses in setting up to become the exclusive U.S. distributor.

29. In bad faith, defendant has failed and refused to supply the goods ordered by plaintiff.

30. In bad faith, defendant has made demands that plaintiff pay for portions of defendant's own product testing and there is no requirement under the Distributor Agreement for plaintiff to do so.

31. In bad faith, defendant has altered its pricing unreasonably, exorbitantly or without notice. Specific prices were not explicitly stated in the Distribution Agreement.

32. Plaintiff has incurred financial losses and will continue to do so due to defendant's breaches of the implied covenant of good faith and fair dealing.

### **THIRD CAUSE OF ACTION**

#### **(ABC Companies 1-10, XYZ Corporations 1-10)**

33. Paragraphs 1 through 32 are realleged and incorporated herein by reference.

34. Defendants ABC Companies 1-10 and XYZ Corporations 1-10 are unknown suppliers or manufacturers who caused price increases, refused to supply products and induced plaintiff to expend funds in reliance on the Distribution Agreement.

35. The actions described in paragraph 34 above were taken by ABC Companies 1-10 and XYZ Corporations 1-10 in breach of their obligations to plaintiff.

36. As a result of the actions of the ABC Companies 1-10 and XYZ Corporations 1-10, plaintiff has been damaged and will continue to incur damages.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against the defendant as follows:

1. Monetary damages for all the expenses incurred by plaintiff in setting up to fulfill the role of U.S. distributor;
2. Monetary damages for lost profits from the sale of defendant's products which have been withheld from plaintiff;
3. An order compelling defendant to comply with its obligations under the Distribution Agreement; and

4. Such other and further relief as the Court may deem in the interest of justice.

Respectfully submitted,

Date: April 11, 2018

By: /s/ Evelyn A. Donegan EAD 6720  
EVELYN A. DONEGAN, ESQ.  
RUBIN, KAPLAN & ASSOCIATES  
ATTORNEYS FOR PLAINTIFF  
200 Centennial Avenue, Suite 110  
Piscataway, New Jersey 08854  
732-463-7511  
edonegan@rkalaw.com (Email)

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

The undersigned hereby certifies, pursuant to Local Civil Rule 11.2, that with respect to the matter in controversy herein, neither plaintiff nor plaintiff's attorney is aware of any other action pending in any court, or any pending arbitration or administrative proceeding, to which this matter is subject.

Respectfully submitted,

Date: April 11, 2018

By: /s/ Evelyn A. Donegan EAD 6720  
EVELYN A. DONEGAN, ESQ.  
RUBIN, KAPLAN & ASSOCIATES  
ATTORNEYS FOR PLAINTIFF  
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JS 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

VISION INDUSTRIES GROUP, INC.

(b) County of Residence of First Listed Plaintiff Middlesex  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
Rubin, Kaplan & Associates  
200 Centennial Avenue, Suite 110  
Piscataway, NJ 08854

**DEFENDANTS**

ACU PLASMOLD, INC.  
ABC Companies 1-10 & XYZ Corporations 1-10

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                                   |   | PTF                                   | DEF                        |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1            | Incorporated or Principal Place of Business In This State     | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5            | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input checked="" type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6            | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 88j <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort/Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 USC § 1332

Brief description of cause:

Breach of Contract/Breach of Covenant of Good Faith and Fair Dealing

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

230,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes☒ No**VIII. RELATED CASE(S) IF ANY**

(See Instructions):

JUDGE

DOCKET NUMBER

DATE

04/11/2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE